

AMENDED IN SENATE MAY 6, 2003

SENATE BILL

No. 704

Introduced by Senator Florez

February 21, 2003

An act to add Section ~~42315.5~~ *41606* to the Health and Safety Code, relating to air quality, and ~~declaring the urgency thereof, to take effect immediately~~ *making an appropriation therefor*.

LEGISLATIVE COUNSEL'S DIGEST

SB 704, as amended, Florez. Air quality: agricultural burning.

(1) Under existing law, each air pollution control district and air quality management district is authorized to establish a permit system that requires, except as specified, that before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance that may cause the issuance of air contaminants, the person obtain a permit from the air pollution control officer of the district.

~~This bill would require the San Joaquin Valley Air Pollution Control District to require any facility that burns biomass to demonstrate, as a condition to being issued a permit, that at least 30% of the biomass burned at the facility will be derived from agriculture-related waste, as determined by the district. The bill would require the owner or operator of any facility that is subject to that requirement to provide adequate documentation to the district, as determined by the district, and on a quarterly basis in a manner approved by the district, that the facility continues to burn at least 30% agriculture-related waste. The bill would require the facility, if it fails to meet the 30% requirement, to demonstrate that 40% of the biomass burned at the facility was agriculture-related waste in the immediately following quarter, and if~~

~~the facility fails to meet that requirement, the bill would require the district to revoke the facility's permit. The additional duties of the bill for the San Joaquin Valley Air Pollution Control District would impose a state-mandated local program.~~

~~(2) Existing law makes any violation of a rule, regulation, permit, or order of a district a misdemeanor. By expanding the scope of a crime, this bill would impose a state-mandated local program.~~

Existing law establishes the Agricultural Biomass-to-Energy Incentive Grant Program, which permits air districts, as defined, to apply to the Technology, Trade, and Commerce Agency to receive grants to provide incentives to facilities that convert qualified agricultural biomass, as defined, to fuel.

Under the Public Utilities Act, the Public Utilities Commission requires electrical corporations to identify a separate rate component to fund in-state operation and development of existing and new and emerging renewable resources technologies. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing law requires specified electrical corporations to collect specific amounts to support in-state operation and development of existing and new and emerging renewable resources technologies. Existing law also requires the State Energy Resources Conservation and Development Commission (Energy Commission) to transfer funds collected for in-state operation and development of existing and new and emerging renewable resources technologies into the Renewable Resource Trust Fund. Existing law requires that 10% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, after deducting certain administrative costs, be used to provide customer credits to customers that entered into a direct transaction on or before September 20, 2001, for purchases of electricity produced by registered in-state renewable electricity generating facilities. The Customer-Credit Renewable Resource Purchases Account is established within the Renewable Resource Trust Fund, a continuously appropriated fund, to accomplish these purposes.

This bill would authorize the Energy Commission to allocate unencumbered funds from the Customer-Credit Renewable Resource Purchases Account to the San Joaquin Valley Air Pollution Control District, upon appropriation by the Legislature, for purposes of providing incentives to qualified biomass facilities, as defined, within

the district to use increased amounts of qualified agricultural biomass, as defined.

(2) This bill would appropriate \$6,000,000 from the Customer-Credit Renewable Resource Purchases Account to the Energy Commission for allocation to the San Joaquin Valley Air Pollution Control District, for the 2003–04 fiscal year, to provide incentives to qualified biomass facilities within the district to use increased amounts of qualified agricultural biomass.

(3) This bill would make certain findings and declarations regarding the inapplicability of a general statute within the meaning of Section 16 of Article IV of the California Constitution.

~~*(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*~~

~~*This bill would provide that no reimbursement is required by this act for a specified reasons.*~~

~~*(5) This bill would declare that it is to take effect immediately as an urgency statute.*~~

Vote: $\frac{2}{3}$. Appropriation: ~~no~~ yes. Fiscal committee: yes.
State-mandated local program: ~~yes~~ no.

The people of the State of California do enact as follows:

1 SECTION 1. Section ~~42315.5~~ 41606 is added to the Health
2 and Safety Code, to read:
3 ~~42315.5.—(a) Notwithstanding any other provision of law, the~~
4 41606. (a) *It is the intent of the Legislature to reduce air*
5 *pollution from open field burning in the San Joaquin Valley Air*
6 *Pollution Control District and to improve air quality and protect*
7 *the public health through new incentives to biomass facilities*
8 *located in the district to use increased amounts of agricultural*
9 *waste that would otherwise be burned in open fields in the district.*
10 (b) *From unencumbered funds in the Customer-Credit*
11 *Renewable Resource Purchases Account within the Renewable*
12 *Resource Trust Fund, the State Energy Resources Conservation*
13 *and Development Commission shall allocate to the San Joaquin*
14 *Valley Air Pollution Control District, those moneys appropriated*
15 *by the Legislature for purposes of providing incentives to qualified*

1 biomass facilities within the district to use increased amounts of
2 qualified agricultural biomass.

3 (c) For purposes of this section:

4 (1) “Qualified agricultural biomass” means agricultural
5 residues that historically have been open-field burned in the
6 jurisdiction of the San Joaquin Valley Air Pollution Control
7 District from which the agricultural residues are derived, as
8 determined by the air district, excluding urban and forest wood
9 products, that include either of the following:

10 (A) Field and seed crop residues, including, but not limited to,
11 straws from rice and wheat.

12 (B) Fruit and nut crop residues, including, but not limited to,
13 orchard and vineyard pruning and removals.

14 (2) “Qualified biomass facilities” means facilities located
15 within the San Joaquin Valley Air Pollution Control District, that
16 use 50 percent or more of qualified agricultural biomass generated
17 in the district to convert into energy, and that use best available
18 control technology to reduce emissions from the facilities.

19 SEC. 2. Six million dollars (\$6,000,000) is hereby
20 appropriated from unencumbered funds in the Customer-Credit
21 Renewable Resource Purchases Account within the Renewable
22 Resource Trust Fund, to the State Energy Resources Conservation
23 and Development Commission for allocation to the San Joaquin
24 Valley Air Pollution Control District, for the 2003–04 fiscal year,
25 to provide incentives to qualified biomass facilities within the
26 district to use increased amounts of qualified agricultural biomass
27 as provided in Section 41606 of the Health and Safety Code.

28 ~~San Joaquin Valley Air Pollution Control District shall require any~~
29 ~~facility that burns biomass to demonstrate, as a condition to being~~
30 ~~issued a permit pursuant to this chapter, that at least 30 percent of~~
31 ~~the biomass burned at the facility will be derived from~~
32 ~~agriculture-related waste, as determined by the district.~~

33 ~~(b) (1) The owner or operator of any facility that is subject to~~
34 ~~subdivision (a) shall provide adequate documentation to the~~
35 ~~district, as determined by the district, and on a quarterly basis in~~
36 ~~a manner approved by the district, and that the facility continues~~
37 ~~to burn at least 30 percent agriculture-related waste.~~

38 ~~(2) If the facility fails to meet the 30 percent requirement~~
39 ~~described in paragraph (1), the facility shall demonstrate that 40~~

1 ~~percent of the biomass burned at the facility was~~
2 ~~agriculture-related waste in the immediately following quarter.~~

3 ~~(3) If the facility fails to meet the requirements of both~~
4 ~~paragraph (1) and (2), the facility's permit to operate shall be~~
5 ~~revoked by the district.~~

6 ~~SEC. 2.—~~

7 ~~SEC. 3.~~ The Legislature finds and declares that, due to the
8 unique circumstances involving the burning of ~~wood~~ *agricultural*
9 waste in the San Joaquin Valley, a statute of general applicability
10 cannot be enacted within the meaning of subdivision (b) of Section
11 16 of Article IV of the California Constitution.

12 ~~SEC. 3.— No reimbursement is required by this act pursuant to~~
13 ~~Section 6 of Article XIII B of the California Constitution because~~
14 ~~the only costs that may be incurred by a local agency or school~~
15 ~~district will be incurred because this act creates a new crime or~~
16 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
17 ~~for a crime or infraction, within the meaning of Section 17556 of~~
18 ~~the Government Code, or changes the definition of a crime within~~
19 ~~the meaning of Section 6 of Article XIII B of the California~~
20 ~~Constitution.~~

21 ~~Moreover, no reimbursement is required by this act pursuant to~~
22 ~~Section 6 of Article XIII B of the California Constitution because~~
23 ~~a local agency or school district has the authority to levy service~~
24 ~~charges, fees, or assessments sufficient to pay for the program or~~
25 ~~level of service mandated by this act, within the meaning of~~
26 ~~Section 17556 of the Government Code.~~

27 ~~SEC. 4.— This act is an urgency statute necessary for the~~
28 ~~immediate preservation of the public peace, health, or safety~~
29 ~~within the meaning of Article IV of the Constitution and shall go~~
30 ~~into immediate effect. The facts constituting the necessity are:~~

31 ~~In order to control the burning of wood waste and to protect~~
32 ~~public health and safety in the San Joaquin Valley as soon as~~
33 ~~possible, it is necessary that this act take immediate effect.~~